

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RAVI T. PATEL and U.S. POSTAL SERVICE,  
POST OFFICE, Edison, NJ

*Docket No. 02-1349; Submitted on the Record;  
Issued January 28, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issues are: (1) whether appellant had any disability beginning February 16, 1996, causally related to an injury that date; and (2) whether the Office of Workers' Compensation Programs met its burden of proof to justify termination of appellant's medical benefits effective August 21, 2000.

This is the second appeal in the present case. In a January 27, 2000 decision, the Board set aside the February 25 and June 18, 1997 decisions of the Office. The Board found that the evidence of record was sufficient to require further medical development of the record by the Office. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.<sup>1</sup>

In a decision dated June 28, 2000, the Office accepted appellant's claim for low back sprain and herniated nucleus pulposus (HNP) at L3-4.

On July 7, 2000 the Office referred appellant for a second opinion to Dr. David Rubinfeld, a Board-certified orthopedic surgeon. In a medical report dated July 16, 2000, Dr. Rubinfeld reviewed the records provided and examined appellant. Dr. Rubinfeld indicated that appellant presented with back pain and numbness in the left leg. He noted that the physical examination revealed limitations of the thoracolumbar spine in flexion, extension, left lateral bending, right lateral bending, left and right rotation. The physician diagnosed appellant with low back sprain and disc herniation. Dr. Rubinfeld indicated that there was no objective evidence of continuing disability causally related to the incident of February 16, 1996. He noted that there was no medical documentation evidencing continuing care and this would have been necessary with appellant's claimed level of pain.

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<sup>1</sup> Docket No. 97-2768 (issued January 27, 2000). Appellant alleged an injury on February 16, 1996 which he attributed to his duties as a mailhandler.

On July 14, 2000 appellant filed a Form CA-7 requesting wage-loss compensation for disability for the period of February 16, 1996 to July 14, 2000.

Appellant submitted a magnetic resonance imaging (MRI) scan dated February 24, 1997; an electromyogram (EMG) study dated August 27, 1997; and an attending physician's report dated July 18, 2000. The MRI scan revealed a large left-sided HNP extruded at the L3-4 level; a bulge with posterior osteophytosis and discitis at L4-5. The EMG revealed no abnormalities. The attending physician's report dated July 18, 2000, prepared by Dr. Thomas J. Capotosta, an orthopedic surgeon, indicated a history of appellant's work-related back injury. Dr. Capotosta noted that the diagnostic examination revealed degenerative changes at L4-5 and L3-4. He diagnosed appellant with severe low back pain -- coccydynia L3-4 HNP and left lower extremity radiculopathy symptoms. Dr. Capotosta noted that appellant had been treated since March 12, 1996 and was totally permanently disabled from the work-related injury of February 16, 1996.

On August 21, 2000 the Office issued a notice of proposed termination of medical benefits on the grounds that Dr. Rubinfeld's July 16, 2000 report established no continuing disability as a result of the February 16, 1996 employment injury. The Office provided 30 days, in which appellant could respond to this notice.

On August 21, 2000 the Office also issued a decision denying appellant's claim for wage-loss compensation commencing February 16, 1996.

In a letter dated August 25, 2000, appellant requested a hearing before an Office hearing representative. The hearing was held on February 27, 2001. Appellant testified that he did not receive medical care for his back injury from 1997 to 2000, because he did not have medical insurance. Appellant submitted a report from Dr. Capotosta dated February 19, 1997 and Dr. Marc J. Levine, a Board-certified orthopedist and partner of Dr. Capotosta, dated September 26, 2000. Dr. Capotosta noted that he had treated appellant since March 12, 1996 for a work-related back injury. He diagnosed appellant with an HNP of the L5-S1 and L4-5. He noted upon physical examination appellant was in extreme pain; with paravertebral muscle spasm; numbness running down his leg; with very limited mobility. Dr. Capotosta recommended an MRI scan. Dr. Levine's report of September 26, 2000 noted that a history of appellant's injury and treatment with Dr. Capotosta, indicating that he presented with low back pain and left leg pain. He noted that appellant's pain has worsened since the work injury of 1996 with pain in his buttocks, posterolateral thigh, posterolateral leg; and numbness and tingling in the legs. He noted that physical findings of decreased lordosis and tenderness in the midline. Dr. Levine diagnosed appellant with chronic low back pain; L3-4 disc herniation; and predominate low back pain. He recommended a repeat MRI scan and physical therapy.

In a decision dated May 17, 2001, the hearing representative denied appellant's claim for wage-loss compensation, finding that the evidence was not sufficient to establish that appellant sustained any disability from the injury of February 16, 1996.

In a decision dated June 20, 2001, the Office terminated appellant's medical benefits effective August 21, 2000 on the grounds that the weight of the medical evidence established that appellant had no continuing residuals resulting from his February 16, 1996 employment injury.

By letter dated September 7, 2001, appellant requested reconsideration of the Office decisions. Appellant submitted a report from Dr. Levine dated August 27, 2001. He noted a history of appellant's work-related injury and subsequent treatment with Dr. Capotosta. He noted that on February 16, 1996 appellant was lifting heavy buckets of mail repeatedly for a week and sustained back and left leg pain. Dr. Levine indicated that appellant sustained an injury directly related to his employment. He noted that appellant had difficulty obtaining medical care because of lack of medical insurance. Dr. Levine noted that x-rays and an MRI scan were reviewed, which revealed an L3-4 disc herniation. He indicated that the lapse in further testing post 1997 and follow-up treatment were consistent with appellant's claim of having no medical coverage during this time. Dr. Levine noted that "with a reasonable degree of medical certainty, I believe [appellant's] disability from work began as a result of an injury sustained on February 16, 1996 and that this disability has kept [appellant] from performing his regular work from that day to the present."

In a decision dated January 23, 2002, the Office denied modification of the prior decisions.

The Board finds that this case is not in posture for decision.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury. As part of this burden, he must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between his disability and the federal employment. The fact that the condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>2</sup>

In this case, the Office accepted that appellant sustained a low back sprain and herniated nucleus pulposus at L3-4 as a result of the February 16, 1996 injury. The Board notes that the Office denied appellant's claim for wage-loss compensation from the date of injury, February 16, 1996, based on the report of the Office referral physician, Dr. Rubinfeld. The Board finds that there is a conflict in medical opinion between Dr. Rubinfeld, the Office referral physician, and Dr. Capotosta and Dr. Levine, appellant's treating physicians.

Dr. Rubinfeld opined that appellant sustained no disability as a result of the work-related injury. He based his opinion on the fact that there was "no evidence of continuing care ... for the level of pain the examinee complained of, ongoing care would have been necessary." He indicated that there was no objective evidence of disability causally related to the incident of February 16, 1996, at the time of his examination in 2000. By contrast, Dr. Levine diagnosed appellant with chronic low back pain; L3-4 disc herniation; and predominate low back pain. He noted that appellant's pain has worsened since the work injury of 1996 with pain in his buttocks, posterolateral thigh, posterolateral leg; and numbness and tingling in the legs. He noted that the lapse in further testing post 1997 and follow-up treatment were consistent with appellant's claim of having no medical coverage during this time. Dr. Levine indicated "with a reasonable degree of medical certainty, I believe [appellant's] disability from work began as a result of an injury

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<sup>2</sup> See *Nicolea Bruso*, 33 ECAB 1138 (1982).

sustained on February 16, 1996 and that this disability has kept [appellant] from performing his regular work from that day to the present.” Drs. Capotosta and Levine have consistently supported permanent work-related disability related to appellant’s back condition, while Dr. Rubinfeld found that appellant sustained no work-related disability as a result of the accepted injury.

Section 8123 of the Federal Employees’ Compensation Act<sup>3</sup> provides that if there is a disagreement between the physician making the examination for the United States and the employee’s physician, the Office shall appoint a third physician who shall make an examination.<sup>4</sup> The case will be remanded to obtain an evaluation, which will resolve the issue involved in the case.<sup>5</sup>

The Board further finds that the Office has not met its burden of proof to terminate medical benefits effective August 21, 2000.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>6</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>7</sup>

In this case, the Office accepted that appellant sustained a low back sprain and herniated nucleus pulposus at L3-4 as a result of the February 16, 1996 injury. The Office terminated medical benefits effective August 21, 2000, based on Dr. Rubinfeld’s examination and report. As noted above, there is a conflict in medical opinion between Dr. Rubinfeld, the Office referral physician, and Dr. Levine, appellant’s treating physicians, all of whom are Board-certified specialist in their respective fields, as to the nature and extent of employment-related residuals.

Dr. Rubinfeld opined that in 2000 appellant had no objective evidence of “disability” and appellant did not have continued medical care from 1997 to 2000. By contrast, Dr. Levine diagnosed appellant with chronic low back pain; L3-4 disc herniation; and predominate low back pain. He noted that appellant’s pain has worsened since the work injury of 1996. He noted that the lapse in further testing post 1997 and follow-up treatment were consistent with appellant’s claim of having no medical coverage during this time. Dr. Levine indicated “with a reasonable degree of medical certainty, I believe [appellant’s] disability from work began as a result of an injury sustained on February 16, 1996 and that this disability has kept [appellant] from performing his regular work from that day to the present.” Drs. Capotosta and Levine support

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<sup>3</sup> 5 U.S.C. § 8123(a).

<sup>4</sup> *Shirley L. Steib*, 46 ECAB 39 (1994).

<sup>5</sup> *See Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863.

<sup>6</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>7</sup> *Vivian L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

medical residuals due to the accepted back conditions, while Dr. Rubinfeld found that appellant had no continuing “disability” as a result of the accepted injury.

Section 8123 of the Act<sup>8</sup> provides that if there is a disagreement between the physician making the examination for the United States and the employee’s physician, the Office shall appoint a third physician who shall make an examination.<sup>9</sup> The Board finds that because the Office relied on Dr. Rubinfeld’s opinion to terminate appellant’s medical benefits without having resolved the existing conflict, the Office has failed to meet its burden of proof.<sup>10</sup>

The January 23, 2002, June 20 and May 17, 2001 decisions of the Office of Workers’ Compensation Programs are reversed and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC  
January 28, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>8</sup> 5 U.S.C. § 8123(a).

<sup>9</sup> *Shirley L. Steib*, *supra* note 4.

<sup>10</sup> *See Craig M. Crenshaw, Jr.*, 40 ECAB 919, 923 (1989) (finding that the Office failed to meet its burden of proof because a conflict in the medical evidence was unresolved).